IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 969, 970 & 971 of 1986

with

FIRST APPEAL NO 351, 352 & 353 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

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Appearance:

1. First Appeal No. 969 to 971 of 1986
Mr. A.D. Oza, GP with Mr. H.C. Patel, AGP for Petitioner No. 1-2
NOTICE SERVED for Respondent No. 1
MR NITIN M AMIN for Respondent No. 1/1-1/2,1/4,2
..... for Respondent No. 1/3,1/5,3-6

2. First Appeal No. 351 of 1987 to 353 of 1987
Mr. Nitin M. Amin for the appellants.
Mr. A.D. Oza, GP with Mr. H.C. Patel, AGP for the Respondents.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 21/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned Government Pleader Mr. A.D. Oza with learned AGP Mr. H.C. Patel for the appellants in the First Appeal No. 969 of 1986 to 971 of 1986 and respondents in First appeal No. 351 of 1987 to 353 of 1987 and Mr. Nitin Amin for the respondents in First Appeal No. 969 of 1986 to 971 of 1986 who are appellants in First Appeal No. 351 of 1987 to 353 of 1987. Both the parties have challenged the award made by the Reference Court concerned in Land Acquisition Case No. 215 of 1984; 216 of 1984 and 217 of 1984 dated 30th October, 1985. First Appeal No. 969 of 1986 to 971 of 1986 have been filed by the State of Gujarat whereas the other group of first appeals have been filed by the original claimants. Brief facts of the appeals are as under:

Before the reference court, three references were made by the Special Land Acquisition Officer Ahmedabad under section 18 of the Land Acquisition Act at the instance of the original claimants as the original claimants were dissatisfied with the award of compensation made by the Special Land Acquisition Officer, Ahmedabad with regard to their lands which were acquired for the purpose of Capital Project of Gandhinagar.

After the formation of the State of Gujarat in the year 1960, the Sachivalaya was temporarily kept at Ahmedabad. Meanwhile, the Executive Engineer and other officers dealing with the said Project were asked to study as to which of the places near Ahmedabad would be fit for shaping capital of the State. After careful study, the Executive Engineer, Capital Project made out a scheme for constructing the capital of the State near the City of Ahmedabad which is at present known as Gandhinagar. As per the said Scheme, the lands on large scale were required to be acquired and, therefore, it was decided by the Government to acquire required quota of the lands by issuing the notifications. Claimants' lands were also included in the proposed plan for acquisition. Notification u/s.4 of the Act dated 20.10.1977 was published on 29.1.1978 and, thereafter, notification

under section 6 of the Act was issued on 29.1.1980 and was published in the Government Gazette on 24.7.1980. Thereafter, the Special Land Acquisition Officer initiated the proceedings bearing Land Acquisition Case No. 829 in respect of the lands of the claimants. He, after hearing the claimants and the acquiring body and also after considering the material before him, awarded the compensation at the rate of Rs.7.00 per sq. mtr. in land reference case no. 215 of 1984; at the rate of Rs.7.25 ps. per square meter in land reference case no. 216 of 1984 and at the rate of Rs.5.00 in land reference case no. 217 of 1984. Feeling aggrieved by the said award of the Special Land Acquisition Officer, the claimants moved the Special Land ACQUISITION Officer for making reference to the reference court and at their instance, aforesaid three references were made by the Special Land Acquisition Officer before the Reference Court.

It was the case of the appellants original claimants before the reference court that the special land acquisition officer has not considered their cases rightly; the appreciation of the evidence before him was arbitrary; it was not consistent with the principles of law. It was their specific case that with a view to help the Government, the Special Land Acquisition Officer has taken a very strict and irrational view; the rate for the compensation fixed was nothing but the mockery; they were cultivating the lands during all the three seasons in a year and were getting good round sum therefrom and on that basis, it was prayed by the claimants for awarding Rs.200.00 per square meter.

On behalf of the State Government, award of compensation made by the Special Land ACQUISITION Officer was supported before the reference court. It was submitted that the fertility of the land, production, situation and developments, the compensation awarded was more than reasonable and no broader view was possible to be taken. The claimants wanted to extort money from the Government by advancing false claim which should be thrown out. It was also submitted that after all public fund was to be affected and the act of the court should not be such which would amount to squandering out the public fund.

Before the reference court, issues were framed at Exh. 8 in all three references. The reference court after considering the evidence on record and also after considering the submissions made before it, awarded compensation at the rate of Rs.130.00 per square meter in

first two references and at the rate of Rs.80.00 per sq. mtr. in third reference. Before the reference court, evidence was recorded in Land Acquisition Case NO. 216 of 1984 and in order to prove the claim by the claimants on behalf of the claimants, one Manibhai Bakorbhai, Power of Attorney Holder of the claimants in Land Reference No. 217 of 1984 was examined at Exh. 30 and in support of their say, the claimants examined Popat Vithal at Exh. 32 and Haribhai Chhaganbhai at Exh. 31. On behalf of the original opponents, one Prahladbhai A. Thakar, Special Land Acquisition Officer was examined at Exh. 38 and certain documents were produced by both the parties before the reference court.

Thereafter, the reference court examined merits of the matter. Before proceeding, it was clarified by the reference as to how ordinarily, the valuation of the property acquired can be made on the basis of the cardinal principle which the court should bear in mind is what the willing vendor would expect and what the willing purchaser would like to pay having regard to condition, distance, situation, area, size, facilities, future, development, possibility of multi purpose use, convenience, net return of the investment etc. It was observed by the reference court that the law on that aspect has been settled by different High Courts as well as the Hon'ble apex court. Various decisions of different High Courts as well as the apex court were considered by the reference court. Thereafter, in para 10 of the award, the reference court considered sale instances.The sale instances referred to in the impugned award were brought on record by the claimants and were considered by the reference court as the best method for fixation of adequate compensation. As per para 10 of the impugned award, Popatbhai Vithalbhai Exh.32 and Haribhai Chhaganbhai Exh. 31 purchased the plots in Gandhinagar for the purposes of constructing three star hotel and building for Kharid Vechan Sangh. It was observed by the reference court in para 10 of the award that the Government of Gujarat auctioned out the plots fixing upset price of Rs.500.00 per sq. mtr. while auctioning

The reference court has also considered one aspect that from the evidence on record, it also transpires that there is brisk industrial development in Gandhinagar since its inception; over and above the industrial development, the development in the fields of science, culture, education is remarkable and, therefore, there is a great demand for plots of land for setting up industrial, social, welfare, educational religious,

philosophical, cultural units in the society. The reference court also considered that the lands in question are having good frontage or virtually on the frontage because of different roads passing nearby and, therefore, the reference court was of the view that having regard to these circumstances also, the just and fair value of the land cannot be less than what has been stated above. After considering the oral evidence of the Special Land Acquisition Officer Shri Prahlad A. Thakar, the reference court has observed that it seems that he did not consider the sale deeds but merely relied upon the entries of the sales made in the revenue record and, therefore, the reference court made it clear that it was conscious about the fact that it is not deciding these reference as if it was sitting in appeal against the award but for justification of its conclusions, it made a reference about the award and the manner in which inquiry for fixation of the compensation was made. The reference court has also observed that the value of the rupee has come down by last certain years. In view of that also, the reference court has fixed the market price of the land under acquisition at the aforesaid rates. After fixing the market value of the lands under acquisition at the aforesaid rate, the reference court has awarded the amount of additional compensation of Rs. 12,09,729.70 ps. to the claimants in the Land Acquisition Case No. 215 of 1984; Rs. 12,67,787.80 ps. to the claimants in Land Acquisition Case No. 216 of 1984 and Rs. 7,42,775.75 ps. to the claimants in Land Reference Case No. 217 of 1984 with interest thereon at the rate of 9 per cent per annum from the date of possession till realization with proportionate costs to the claimants and the opponents were directed to bear their own costs.

During the course of hearing, learned GP Mr. A.D. Oza has submitted that the reference court has committed gross error in awarding additional compensation in favour of the claimants; that the reference court has committed error in relying upon the sale instances which were produced by the claimants relating to the Government land and not the adjoining lands. He has also submitted that the labour court has committed error in not considering the oral evidence of the special land acquisition officer in its proper perspective and, therefore, award made by the reference court is required to be quashed and set aside.

Learned advocate Mr. Amin appearing for the original claimants has submitted that the reference court has rightly considered the sale instances cited by the claimants before it. He has also submitted that the

reference court has rightly appreciated the oral evidence as well as the documentary evidence on record and has rightly come to the conclusion that the price of the lands involved in land acquisition case no. 215 and 216 of 1984 should be of Rs.130.00 per sq. mtrs. and Rs.80.00 per sq. mtr. for the lands involved in land acquisition case no. 217 of 1984 after considering the situation of the land and in doing so, no error has been committed by the reference court. He has, however, submitted that the reference court has erred in not considering two aspects. He has submitted that the claimants are entitled to 30 per cent solatium as per section 23(2) of the Act but that aspect has been totally ignored by the reference court and in that regard, there is no discussion in the body of the judgment and no mention in that regard has been made in the operative order of the reference court. He has also submitted that the claimants are also entitled for the benefit of the amended section 23(1A) for 12 per cent interest in the market price. He has also submitted that the claimants are also entitled to have interest at the 15 per cent per annum as per section 28 and proviso thereof which has not been granted by the reference court. It was his submission that the reference court has committed error in not giving benefit of the amended provisions. He has submitted that the reference court has committed error in rejecting such claim of the claimant on the ground that unless and until the amount of compensation is determined by the court, question of granting penal interest does not arise. He has submitted that the section itself is very much clear that if the amount is not deposited within one year from the date on which the possession was taken over from the claimants, then, the claimants are entitled for 15 per cent interest and, therefore, the reference court has committed error in interpreting that section. He has submitted that the said part of the award has been challenged by the original claimants by filing first appeal no. 351 of 1987 to 353 of 1987 and therefore, in view of the amended provisions of the Act, those appeals are required to be allowed while dismissing the appeals preferred by the State Government.

We have considered the submissions made by the learned advocates for the parties. We have also perused the entire award made by the reference court. We are of the view that the reference court has rightly appreciated the oral and documentary evidence which was led and produced before it. Before the reference court, on behalf of the claimants, one Manibhai Bakorbhai, Power of Attorney Holder of the claimants in Land Reference No. 217 of 1984 was examined at Exh. 30 and in support of

their say, the claimants examined Popat Vithal at Exh. 32 and Haribhai Chhaganbhai at Exh. 31. On behalf of the original opponents, one Prahladbhai A. Thakar, Special Land Acquisition Officer was examined at Exh. 38 and certain documents were produced by both the parties before the reference court. Witnesses Popatbhai Vithalbhai and Haribhai Chhaganbhai have cited the sale instances in their evidence which were relating to the period when the lands were acquired by the State Government and the reference court has also discussed the oral evidence of each witnesses as stated above. The reference court has also considered the sale instances at Exh. 13 to 19 and has also considered the oral evidence of the land acquisition officer Mr. Thakar and after considering the sale instances which were produced before it, the reference court has come to the conclusion that between 1970 to 1983, the Government, after acquiring the lands, sold out certain different plots which were in excess at the rates ranging between Rs. 120.00 per sq. mtr. to Rs. 961.00 per sq.mtr. and has rightly considered that this fact shows that right from 1970, the prices in Gandhinagar were showing rising trend. Certain other plots of lands were also disposed of by the Government by way of auction at the rate of Rs.200.00 per square meter about which advertisement had appeared in the news paper. The plots were disposed of by way of sale as per Exh. 20 in March, 1981. Therefore, we are of the view that the reference court was right in considering all these aspects of the matter and in coming to the conclusion that the sale instances would definitely go to show that the compensation awarded by the special land acquisition officer at the rate of Rs.7/- and Rs.5/respectively was certainly meagre amount in view of the sale instances in the year 1979 and 78. The reference court was also right in coming to the conclusion that the market value was ranging between Rs.120.00 to Rs.130.00 per square meter. We are also of the view that the reference court has rightly considered that when the Government sold the lots at the rate of Rs.120.00 to Rs.130.00 per sq. mtr.during the relevant years, it is not open for the Government to challenge the claim of the claimants and play double game and it cannot purchase the land at the throw away prices of Rs.7.00 or Rs.5.00 per sq. mtr. The reference court has rightly observed that if the Government prefers to sell at the fantastic rate, it would be its indirect admission that the market value for the purpose of fixation of compensation would be that rate and not the one fixed by the Special Land Acquisition Officer and, therefore, in view of the sale instances and the rates of plots disposed by the Government during the relevant years, the

reference court rightly held that in this case, during the relevant period, the rates were ranging between Rs.120.00 and Rs.130.00 and, therefore, it fixed the rate of Rs.130.00 per sq. mtr., beneficial to the claimants as regards the lands involved in the land reference case no. 215 of 1984 and 216 of 1984 on the basis of the consideration that as per the map at Exh. 37, 28 and 20, they have become part of the Gandhinagar City and as regards the lands involved in the third case namely land reference case no. 217 of 1984, the reference court rightly viewed that it is at a small distance from sectors 13, 14, 15 to be more exact, it is just on the border of Gandhinagar City as can be seen from the map at Exh. 38 and, therefore, it was right in holding that the prices of the lands involved in land reference case no. 217 of 1984 should be less than that of the lands involved in land reference case no. 216 and 216 of 1984 and, therefore, as regards lands involved in land reference case no. 217 of 1984, the reference court has rightly fixed the price at Rs. 80.00 per sq. mtr. Therefore, the reference court has rightly appreciated the oral and documentary evidence on record after considering the legal position and has rightly awarded the additional compensation in favour of the original compensation and in doing that, the reference court has not committed any error. We are agreeing with the findings and conclusions given by the reference court and, therefore, there is no substance in the appeals filed by the State Government and are, therefore, required to be dismissed. Same are hereby dismissed with no order as to costs.

FIRST APPEAL NO 351, 352 & 353 of 1987 have been filed by the original claimants and have raised grievance about non grant of the solatium at the rate of 30 per cent, 12 per cent increase in the market price and for not granting interest at the rate of 15 per cent on the total amount including the amount of solatium.

We have considered the contentions raised by Mr. Amin for the original claimants and Mr. Oza, learned AGP for the State Government in this regard. Looking to the impugned award,it appears that there is no such discussion made by the reference court about grant of solatium to the claimants.Considering the effect of the amendment made in the Land Acquisition Act, 1894 dated 24th September, 1984 made effective from 30th April, 1982,we are of the view that the claimants are entitled to solatium as a matter of legal right which has been granted by the Statute. As per the said amendment, all the cases pending before any court should be given the

benefit of the amended Act. As per sub section (2) of section 23 of the amended Act, in addition to the market value of the land, as above provided, the Court shall, in every case award a sum of thirty per centum on such market value in consideration of compulsory nature of acquisition. In the facts of the present case, looking to the date of the award made by the special land acquisition officer dated 24th April, 1984, it would mean that it is prior to the date 24th September, 1984 when the amended Act came into force. Therefore, considering the effect of the amended Act of 1984 which is having effect from 24th September, 1984, in view of section 30(2), the claimants are entitled to have the benefits of amended section 23(2) and 28 of the Principal Act. Said section provide that the provisions of sub section of section 23 and 28 of the Principal Act as amended by clause (b) of section 15 and 18 of this Act respectively shall apply and shall be deemed to have applied also to and in relation to any award made by the Collector or Court or any order passed by the High Court in appeal against any such award under the provisions of the Principal Act and later than April, 1982 [date of introduction of the Land Acquisition (Amendment) Bill 1982] in the House of People and before the commencement of this Act and,therefore, in the facts and circumstances of the present case, the land acquisition officer has passed award on 24th April,1984 and, therefore, the claimants are entitled for 30 per cent solatium on the total amount of compensation which has been granted by the reference court.

In respect of the next contention raised by Mr. Amin that the claimants are also entitled for 12 per cent increase under section 23 (1A). As per sub section (1A) of section 23 of the amended Act, in addition to the market value of the and,as above provided,the COurt shall,in every case award an amount calculated at the rate of 12 per centum per annum on such market value for the period commencing on and from the date of publication of the notification under section 4, sub section (1) in respect of such land to the date of the award of the Collector or the date of taking over possession of the land whichever is earlier..... Therefore,looking to the aforesaid provisions, in the facts and circumstances of the present case, when the possession of the lands involved in this case was taken over by the State Government on 25th March, 1973 and the section 4 notification has been issued by the State Government on 29thJanuary, 1978, therefore,considering the date of the award of the Special Land Acquisition 24th April, 1984, the claimants are entitled to have 12 per cent increase

in the market value from the date of publication of section 4 notification to the date of the award made by the Special Land Acquisition Officer 24th April, 1974 or the date of taking over the possession of the land 25th March, 1973, whichever is earlier.

Lastly, he has submitted that the claimants are entitled for 15 per cent interest as per proviso so section 28 of the Act. This question has been examined by the reference court and has rejected the claim of interest at the rate of 15 per cent per annum. The reference court was of the view that unless and until the Court has determined the compensation, question of paying penal interest does not arise. In view of this conclusion, the reference court has rejected the claim for grant of 15 per cent interest. Considering section 28 and proviso thereto, where such excess or any part thereof is paid into the Court after the date of expiry of the period of one year from the date on which the possession is taken, interest at the rate of 15 per cent shall be payable from the date of expiry of the said period on the amount of such excess or any part thereof which is not paid into the Court before the day of such expiry. Meaning thereby, once the award has been passed by the Court and if the amount has not been deposited within one year from the date of taking over possession of the land, then, in that event, the claimants would become entitled for interest at the rate of 15 per cent. It was the duty of the Land Acquisition Officer to determine proper and adequate compensation under the provisions of the Land Acquisition Act but he failed and due to that, the claimants were dissatisfied with the award and, therefore, references were made by the Land Acquisition Officer at their instance and, therefore, the reference court has awarded additional compensation to the claimants which ought to have been awarded by the Special Land Acquisition Officer and, therefore, considering that fact and also considering the effect of section 28 and proviso thereto, we are of the view that the claimants are entitled to have 15 per cent interest from the second year,from the date of taking possession of the land under acquisition till the amount is deposited by the State Government before the concerned Court.

In view of our above observations, the appeals filed by the original claimants are required to be allowed. The claimants are entitled to have 30 per cent solatium on the amount of total compensation awarded by the reference court. The claimants are also entitled to have 9 per cent interest as per section 28 of the Land

Acquisition Act upon the total amount of compensation awarded by the reference court including the amount of solatium. The claimants are also entitled to have 15 per cent interest on the total amount of compensation including the solatium as per proviso to section 28 of the Land Acquisition Act from the second year from the date of possession till the amount of compensation has been deposited by the State Government in the COurt. The claimants are also entitled to 12 per cent increase on the market price which has been awarded by the reference court u/s. 23(1A) of the Land Acquisition Act for the period from the date of the notification under section 4 of the Land Acquisition Act 28th January, 1978 till the date of the award made by the Land Acquisition Officer on 24th April, 1984.

In view of this entitlement of the claimants, it is directed to the respondents to deposit the amount which has been ordered by this court before the concerned reference court within three months from the date of receipt of certified copy of this order.

Today, we have dismissed the appeals filed by the State Government against the award made by the reference court. In view of the interim orders made by this court, amount has been deposited before the reference court concerned alongwith interest and costs as per the award made by the reference court and such amount was ordered to be invested in the concerned bank. Now, since the appeals of the State Government have been disposed of, it is directed to the concerned reference court to withdraw such amount and to disburse the same with interest accrued thereon to the claimants by withdrawing the same from the respective bank. Accordingly, the appeals filed by the State Government are dismissed and the appeals filed by the original claimants are allowed to the extent indicated hereinabove. There shall be no order as to costs.

21.10.2002. (Kshitij R.Vyas,J.)

(H.K. Rathod,J.)

Vyas